

CLOSED, ECF

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:06-cv-01553-RMB**

The New York Times Company v. United States Department of
Defense

Assigned to: Judge Richard M. Berman
Cause: 05:552 Freedom of Information Act

Date Filed: 02/27/2006
Date Terminated: 08/29/2007
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: Federal Question

Plaintiff**The New York Times Company**

represented by **David Edward McCraw**
The New York Times Company
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LEAD ATTORNEY
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V.

Defendant**United States Department of Defense**

represented by **Rupa Bhattacharyya**
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Defendant**Department of Justice**

represented by **Rupa Bhattacharyya**
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Date Filed	#	Docket Text
02/27/2006	<u>1</u>	COMPLAINT against United States Department of Defense. (Filing Fee \$ 250.00, Receipt Number 571066) Document filed by The New York Times Company.(jar,) Additional attachment(s) added on 3/1/2006 (lb,). (Entered: 02/28/2006)
02/27/2006		Magistrate Judge Ronald L. Ellis is so designated. (jar,) (Entered: 02/28/2006)
02/27/2006		Case Designated ECF. (jar,) (Entered: 02/28/2006)
02/27/2006	<u>2</u>	RULE 7.1 DISCLOSURE STATEMENT. Document filed by The New York Times Company.(jar,) Additional attachment(s) added on 3/1/2006 (lb,). (Entered: 02/28/2006)
02/27/2006		SUMMONS ISSUED as to United States Department of Defense, U.S. Attorney and U.S. Attorney General. (jar,) (Entered: 03/01/2006)
03/15/2006	<u>3</u>	ENDORSED LETTER addressed to Judge Richard M. Berman from David E. McCraw dated 3/13/06 re: Counsel writes to request that the conference be rescheduled. Conference adjourned to 4/17/06 @ 9:15 a.m. (Signed by Judge

		Richard M. Berman on 3/15/06) (jco,) (Entered: 03/15/2006)
03/15/2006		Set Deadlines/Hearings: Pretrial Conference set for 4/17/2006 09:15 AM before Judge Richard M. Berman. (jco,) (Entered: 03/15/2006)
03/30/2006	<u>4</u>	NOTICE OF APPEARANCE by Rupa Bhattacharyya on behalf of United States Department of Defense (Bhattacharyya, Rupa) (Entered: 03/30/2006)
03/31/2006	<u>5</u>	ENDORSED LETTER addressed to Judge Richard M. Berman from Peter D. Keisler dated 3/30/06 re: a request for an extension of time until 4/14/2006 to file an answer to the complaint. ENDORSEMENT: Extension GRANTED. (Signed by Judge Richard M. Berman on 3/31/06) (kco,) (Entered: 03/31/2006)
04/13/2006	<u>6</u>	ENDORSED LETTER addressed to Judge Richard M. Berman from Rupa Bhattacharyya dated 4/11/06 re: counsel for dfts request that the court allow the dept. of Defense an extension of time until 5/8/06 in which to answer or otherwise respond to plaintiff's first amended complaint and that the initial case management conference be adjourned. Adjourned to 5/15/06 @ 9:45 Time to answer extended. (Signed by Judge Richard M. Berman on 4/13/06) (dle,) (Entered: 04/14/2006)
04/13/2006		Set Deadlines/Hearings:United States Department of Defense answer due 5/8/2006. Case Management Conference set for 5/15/2006 09:45 AM before Judge Richard M. Berman. (dle,) (Entered: 04/14/2006)
04/26/2006	<u>7</u>	FIRST AMENDED COMPLAINT amending <u>1</u> Complaint against Department of Justice, United States Department of Defense.Document filed by The New York Times Company. Related document: <u>1</u> Complaint filed by The New York Times Company.(sac,) (Entered: 04/27/2006)
05/08/2006	<u>8</u>	ANSWER to Amended Complaint. Document filed by Department of Justice, United States Department of Defense. Related document: <u>7</u> Amended Complaint filed by The New York Times Company,.(Bhattacharyya, Rupa) (Entered: 05/08/2006)
05/15/2006	<u>9</u>	CASE MANAGEMENT PLAN: Status of settlement discussions: Continuing &Working (Signed by Judge Richard M. Berman on 5/15/2006) (lb,) (Entered: 05/15/2006)
07/18/2006	<u>10</u>	ENDORSED LETTER addressed to Judge Richard M. Berman from David McCraw dated 7/17/06 re: counsel requests that the time for the parties' update on the status of the matter be extended to 7/31/06. Application granted, on consent. (Signed by Judge Richard M. Berman on 7/18/06) (dle,) (Entered: 07/18/2006)
07/18/2006		Set/Reset Deadlines: Status Report due by 7/31/2006. (dle,) (Entered: 07/18/2006)
08/01/2006	<u>11</u>	ENDORSED LETTER addressed to Richard M. Berman from David E. McCraw dated 7/31/06 re: a request for the following schedule: Government's motion due by 10/2/06, plaintiff's response and cross motion due 11/2/06, government's reply due 12/4/06, and plaintiff's reply due 12/16/06. ENDORSEMENT: Government's main brief and plaintiff's responsive brief (including any cross motions) are subject to 25 pp limit, double spaced, 12' font (and no exhibits other than those quoted in the brief). (Signed by Judge Richard M. Berman on 7/31/06) (kco,) (Entered: 08/01/2006)
09/28/2006	<u>12</u>	ENDORSED LETTER addressed to Judge Richard M. Berman from Peter Keisler dated 9/26/06 re: counsel for dfts request that the court alter the scheduling order so that dfts would move for summary judgment on 11/1/06; plaintiff's response and cross motion for summary judgment would be due 11/22/06; with the dfts' reply and response due on 12/15/06; plaintiff's reply will be due on 12/29/06. Application granted. (Signed by Judge Richard M. Berman on 9/28/06) (dle,) (Entered: 09/28/2006)
09/28/2006		Set/Reset Deadlines: Motions due by 11/1/2006. Replies due by 12/29/2006. Responses due by 11/22/2006 (dle,) (Entered: 09/28/2006)
10/31/2006	<u>13</u>	ENDORSED LETTER addressed to Judge Richard M. Berman from Rupa Bhattacharyya dated 10/30/06 re: counsel for dfts requests that the court alter the scheduling order as follows: motion for summary judgment on 11/15/06; response

		and cross motion on 12/6/06; reply and response on 1/5/07; reply to cross motion on 1/19/07. OK to change the schedule but let's adhere to page limits. (Signed by Judge Richard M. Berman on 10/31/06) (dle,) Modified on 11/3/2006 (dle,). (Entered: 10/31/2006)
10/31/2006		Set/Reset Deadlines: Cross Motions due by 12/6/2006. Motions due by 11/15/2006. Replies due by 1/5/2007. Responses due by 12/6/2006 (dle,) (Entered: 10/31/2006)
11/15/2006	<u>14</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – MOTION for Summary Judgment. Document filed by Department of Justice, United States Department of Defense. Responses due by 12/6/2006 (Attachments: # <u>1</u> Exhibit A — Redacted Bradbury Declaration# <u>2</u> Exhibit B — Kammer Declaration# <u>3</u> Exhibit C — Pustay Declaration# <u>4</u> Exhibit D — Redacted Baker Declaration# <u>5</u> Exhibit E — Redacted Hardy Declaration# <u>6</u> Exhibit F — Kovakas Declaration# <u>7</u> Exhibit G — Giles Declaration# <u>8</u> Exhibit H — NSA Declaration# <u>9</u> Exhibit I — DoD FOIA Response# <u>10</u> Exhibit J — Criminal Division FOIA Response# <u>11</u> Exhibit K — Criminal Division Referral Response# <u>12</u> Statement of Material Facts Not in Genuine Dispute)(Bhattacharyya, Rupa) Modified on 11/17/2006 (kg). (Entered: 11/15/2006)
11/15/2006	<u>15</u>	NOTICE of Lodging of Classified Exhibits in Support of re: <u>14</u> MOTION for Summary Judgment.. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 11/15/2006)
11/17/2006		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT – DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Rupa Bhattacharyya to RE-FILE Document <u>14</u> MOTION for Summary Judgment. ERROR(S): Filing Error of Attachments. Supporting Documents must be filed individually. Event Codes located under Responses and Replies. (kg) (Entered: 11/17/2006)
11/17/2006	<u>16</u>	MOTION for Summary Judgment. Document filed by Department of Justice, United States Department of Defense. Responses due by 12/6/2006 (Bhattacharyya, Rupa) (Entered: 11/17/2006)
11/17/2006	<u>17</u>	MEMORANDUM OF LAW in Support re: <u>16</u> MOTION for Summary Judgment.. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 11/17/2006)
11/17/2006	<u>18</u>	DECLARATION of Steven G. Bradbury in Support re: <u>16</u> MOTION for Summary Judgment.. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 11/17/2006)
11/17/2006	<u>19</u>	DECLARATION of William T. Kammer in Support re: <u>16</u> MOTION for Summary Judgment.. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 11/17/2006)
11/17/2006	<u>20</u>	DECLARATION of Melanie Ann Pustay in Support re: <u>16</u> MOTION for Summary Judgment.. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 11/17/2006)
11/17/2006	<u>21</u>	DECLARATION of James A. Baker in Support re: <u>16</u> MOTION for Summary Judgment.. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 11/17/2006)
11/17/2006	<u>22</u>	DECLARATION of David M. Hardy in Support re: <u>16</u> MOTION for Summary Judgment.. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 11/17/2006)
11/17/2006	<u>23</u>	DECLARATION of James M. Kovakas in Support re: <u>16</u> MOTION for Summary Judgment.. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 11/17/2006)
11/17/2006	<u>24</u>	DECLARATION of Louis F. Giles in Support re: <u>16</u> MOTION for Summary Judgment.. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 11/17/2006)

11/17/2006	<u>25</u>	DECLARATION of Lynne R. in Support re: <u>16</u> MOTION for Summary Judgment.. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 11/17/2006)
11/17/2006	<u>26</u>	RULE 56.1 STATEMENT. Document filed by Department of Justice, United States Department of Defense. (Attachments: # <u>1</u> Exhibit I -- DoD FOIA Response# <u>2</u> Exhibit J -- CRIM FOIA Response# <u>3</u> Exhibit K -- CRIM Referral Response)(Bhattacharyya, Rupa) (Entered: 11/17/2006)
12/06/2006	<u>27</u>	MOTION for Summary Judgment <i>Notice of Motion</i> . Document filed by The New York Times Company. (McCraw, David) (Entered: 12/06/2006)
12/06/2006	<u>28</u>	FILING ERROR – WRONG DOCUMENT TYPE SELECTED FROM MENU – MOTION for Summary Judgment <i>Memorandum of Law</i> . Document filed by The New York Times Company. (McCraw, David) Modified on 7/2/2007 (kkc). (Entered: 12/06/2006)
12/06/2006	<u>29</u>	FILING ERROR – WRONG DOCUMENT TYPE SELECTED FROM MENU – MOTION for Summary Judgment <i>Lichtblau Declaration</i> . Document filed by The New York Times Company. (McCraw, David) Modified on 7/2/2007 (kkc). (Entered: 12/06/2006)
12/06/2006	<u>30</u>	FILING ERROR – WRONG DOCUMENT TYPE SELECTED FROM MENU – MOTION for Summary Judgment <i>McCraw Declaration</i> . Document filed by The New York Times Company. (McCraw, David) Modified on 7/2/2007 (kkc). (Entered: 12/06/2006)
12/06/2006	<u>31</u>	FILING ERROR – WRONG DOCUMENT TYPE SELECTED FROM MENU – MOTION for Summary Judgment <i>Plaintiff's Statement of Material Facts As To Which There is No Genuine Issue</i> . Document filed by The New York Times Company. (McCraw, David) Modified on 7/2/2007 (kkc). (Entered: 12/06/2006)
12/06/2006	<u>32</u>	FILING ERROR – WRONG DOCUMENT TYPE SELECTED FROM MENU – MOTION for Summary Judgment <i>Plaintiff's Rule 56.1(b) Statement Of Material Facts As To Which There Is A Genuine Dispute</i> . Document filed by The New York Times Company. (McCraw, David) Modified on 7/2/2007 (kkc). (Entered: 12/06/2006)
01/02/2007	<u>33</u>	ENDORSED LETTER addressed to Judge Richard M. Berman from Peter D. Keisler dated 12/28/2006 re: to respectfully request that the Court alter scheduling order, and counsel for plaintiff has advised that he does not object to. Under the proposed revised schedule, defendants' Reply in support of its pending Motion for Summary Judgment and its Response to plaintiff's pending Motion for Partial Summary Judgment will be due January 19,2007. A concurrent extension would make Plaintiff's reply due on February 2, 2007. Responses due by 1/19/2007 Replies due by 2/2/2007. ENDORSEMENT: Application granted on consent. SO ORDERED. (Signed by Judge Richard M. Berman on 1/2/2007) (jmi,) (Entered: 01/03/2007)
01/19/2007	<u>34</u>	RESPONSE in Opposition re: <u>28</u> MOTION for Summary Judgment <i>Memorandum of Law. and Reply in Support of Defendants' Pending Motion for Summary Judgment (17)</i> . Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 01/19/2007)
01/19/2007	<u>35</u>	RULE 56.1 STATEMENT. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 01/19/2007)
02/02/2007	<u>36</u>	REPLY MEMORANDUM OF LAW in Support re: <u>27</u> MOTION for Summary Judgment <i>Notice of Motion</i> .. Document filed by The New York Times Company. (McCraw, David) (Entered: 02/02/2007)
05/29/2007	<u>37</u>	ORDER If defendants submit the Vaughn Index without redactions, defendants shall serve and file the Index and fax a copy to chambers no later than 6/5/07. If redactions are necessary, defendants shall serve and file the redacted Index and make the unredacted Index and make the unredacted Index available to the Court for in camera review no later then 6/5/07. (Signed by Judge Richard M. Berman on 5/29/07) (jco) (Entered: 05/30/2007)

06/05/2007	<u>38</u>	RESPONSE re: <u>37</u> Order,. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 06/05/2007)
06/05/2007	<u>39</u>	DECLARATION of Steven G. Bradbury (Redacted) re: <u>38</u> Response, <u>37</u> Order,. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 06/05/2007)
06/29/2007	<u>40</u>	DECISION AND ORDER: For the reasons stated herein, Defendants' motion for summary judgment is GRANTED, and Plaintiff's cross-motion is DENIED, with respect to all Classified Documents. Following a review of Defendants' additional submissions, the Court will determine whether summary judgment is appropriate with respect to the Unclassified Documents and the adequacy of the DOD search. So Ordered. (Signed by Judge Richard M. Berman on 6/28/07) (js) (Entered: 07/02/2007)
07/16/2007	<u>41</u>	RESPONSE re: <u>40</u> Order on Motion for Summary Judgment,,, Document filed by Department of Justice, United States Department of Defense. (Attachments: # <u>1</u> Exhibit A --- Letter 7.13.2007)(Bhattacharyya, Rupa) (Entered: 07/16/2007)
07/16/2007	<u>42</u>	DECLARATION of Daniel J. Dell'Orto re: <u>41</u> Response. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 07/16/2007)
07/20/2007	<u>44</u>	ORDER; that Defendants shall submit to the Court, on or before 7/26/07, the final versions of all documents identified as "drafts" in Defendants' 7/16/07 submission to the Court, and shall indicate whether the final version has been produced to the New York Times Company purs. to Plaintiff's 12/16/05 Freedom of Information Act request. Defendants also shall submit a description of any differences between the final version and the documents identified as "drafts." In particular, the draft documents shall include information as set forth in this Order. (Signed by Judge Richard M. Berman on 7/19/07) (ae) (Entered: 07/24/2007)
07/23/2007	<u>43</u>	ENDORSED LETTER addressed to Judge Richard M. Berman from David E.McCraw dated 7/19/07 re: Request for permission to make the proposed supplemental submission on or before 7/30/07. ENDORSEMENT: Application granted for letter brief of up to 5pp (double spaced). Any response from the govt is due 8/1/07 (and same page limits). NY Times brief to be submitted by noon on 7/27/07. (Signed by Judge Richard M. Berman on 7/23/07) (cd) (Entered: 07/24/2007)
07/24/2007	<u>45</u>	ENDORSED LETTER addressed to Judge Richard M. Berman from Rupa Bhattacharyya dated 7/23/07 re: counsel for dfts request that the court allow dfts an additional week's time until 8/2/07 in which to provide the court with the additional information requested in the court's order of 7/19/07. ENDORSEMENT: Application granted on consent. (Signed by Judge Richard M. Berman on 7/24/07) (dle) (Entered: 07/25/2007)
07/26/2007	<u>46</u>	RESPONSE in Opposition re: <u>16</u> MOTION for Summary Judgment. <i>Opposition to Declaration of Daniel J. Dell'Orto</i> . Document filed by The New York Times Company. (McCraw, David) (Entered: 07/26/2007)
08/01/2007	<u>47</u>	REPLY re: <u>43</u> Endorsed Letter, <u>46</u> Response in Opposition to Motion. Document filed by Department of Justice, United States Department of Defense. (Bhattacharyya, Rupa) (Entered: 08/01/2007)
08/28/2007	<u>48</u>	DECISION AND ORDER Defendants' motion for summary judgment, dated November 17,2006, which requested that the Court determine that the documents reviewed in camera were properly withheld pursuant to FOIA, and Plaintiffs cross-motion for summary judgment, dated December 6,2006, which requested that the Court order disclosure of such documents pursuant to FOIA, are granted in part and denied in part, respectively, as specified herein. Defendants' motion for summary judgment is granted with respect to the adequacy of the DOD search. (See also Order dated May 29,2007, Order dated June 28, 2007, Order dated July 19,2007.) The Clerk of Court is respectfully requested to close this case. (Signed by Judge Richard M. Berman on 8/28/2007) (jmi) (Entered: 08/29/2007)
08/28/2007		Transmission to Judgments and Orders Clerk. Transmitted re: <u>48</u> Order, to the Judgments and Orders Clerk. (jmi) (Entered: 08/29/2007)

08/29/2007	<u>49</u>	CLERK'S JUDGMENT That for the reasons stated in the Court's Decision and Order dated August 28, 2007, defendants motion for summary judgment dated November 17, 2006, which requested that the Court determine that the documents reviewed in camera were properly withheld pursuant to FOIA, and plaintiffs cross-motion for summary judgment dated December 6, 2006, which requested that the Court order disclosure of such documents pursuant to FOIA, are granted in part and denied in part, respectively, as specified in the Courts Decision and Order dated August 28, 2007, and defendants motion for summary judgment with respect to the adequacy of the DOD search is granted; accordingly, the case is closed. (Signed by J. Michael McMahon, clerk on 8/29/07) (Attachments: # <u>1</u> notice of right to appeal)(ml) (Entered: 08/29/2007)
09/13/2007	<u>50</u>	MOTION for Reconsideration re; <u>48</u> Order,,, <u>49</u> Clerk's Judgment,,, Document filed by Department of Justice. (Attachments: # <u>1</u> Exhibit A)(Bhattacharyya, Rupa) (Entered: 09/13/2007)
09/14/2007	<u>51</u>	MEMORANDUM OF LAW in Opposition re: <u>50</u> MOTION for Reconsideration re; <u>48</u> Order,,, <u>49</u> Clerk's Judgment,,, Document filed by The New York Times Company. (McCraw, David) (Entered: 09/14/2007)
09/14/2007	<u>52</u>	ENDORSED LETTER addressed to Judge Richard M. Berman from Rupa Bhattacharyya dated 9/13/2007 re: Thus, defendant respectfully requests that the Court allow the filing of the Declaration of Steven G. Bradbury attached as Exhibit A to the defendant's Motion to Reconsider Decision and Order of August 28,2007 Ordering Release of OLC 26 under FOIA. ENDORSEMENT: OK to File Motion. Plaintiff respond by 9/28/2007 at noon. SO ORDERED.Responses due by 9/28/2007 (Signed by Judge Richard M. Berman on 9/14/2007) (jmi) (Entered: 09/14/2007)
09/28/2007	<u>53</u>	ORDER: It is hereby ORDERED, that Defendants shall submit to the Court, on or before noon on October 11, 2007, the document identified as OLC 26 for in camera review. (Signed by Judge Richard M. Berman on 9/28/07) (tro) (Entered: 09/28/2007)
10/26/2007	<u>54</u>	ORDER: for reasons further set forth in said Order, Defendant's <u>50</u> Motion for Reconsideration is DENIED. (Signed by Judge Richard M. Berman on 10/26/07) (db) (Entered: 10/26/2007)